

STATE OF NEW HAMPSHIRE

PROBATE COURT

PROCEDURE BULLETIN 22

RELATIVE TO: Hearings with Incarcerated Parties

This procedure bulletin is prepared for informational purposes in processing case files. It is not intended to provide parties with legal advice.

Due process requires an incarcerated litigant be given meaningful access to court proceedings. However, it does not mandate the person's physical presence in the courtroom. The appropriate procedures to provide meaningful access will vary with the individual circumstances of the case. All litigants must be provided a fair opportunity to participate in and to respond to the court proceedings. The New Hampshire Supreme Court has stated that meaningful access may be afforded by telephonic connection, representation by counsel, or written communications with the court. In re Baby K, 143 N.H. 201, 207-8 (1998) (citations omitted).

The following options are available when the court determines that procedural due process requires the participation of an incarcerated litigant via either telephonic or video conferencing.

- 1) Telephonic hearings:
 - a) Speaker phone feature on regular telephone;
 - b) Polycom teleconferencing equipment; or, if available,
 - c) CourtCall® as referenced in Administrative Order 14
- 2) Video conferencing equipment at some superior and district court locations.

The following are the procedures to be used for non-CourtCall® telephonic and video hearings:

- 1) The court will contact the corrections facility to determine the options available for either a telephonic or video hearing.
- 2) When video conferencing will be utilized, the court will schedule the hearing at a nearby superior or district court with video conferencing equipment. The court should contact the facility approximately one-half hour prior to the hearing to confirm that all parties will be ready.

- 3) When either a polycom unit or a speaker phone will be used, the polycom unit or telephone will be set up in the courtroom. The corrections facility will provide the incarcerated party with a telephone in a private area where he/she is able to listen to and participate in the proceedings. All parties in the courtroom and the incarcerated party must be able to hear the entire court proceedings.
- 4) The attorney may choose to be with his client at the corrections facility or be in the courtroom. The attorney will notify the court prior to the hearing of the attorney's chosen location.
- 5) The court will ensure that an incarcerated party and his/her counsel are able to confer privately as necessary throughout the hearing. To assure such privacy, the court will provide, if necessary, a telephone in a room adjacent to the courtroom.
- 6) The court will appoint a designated representative of the court (such as an employee of the corrections facility) to be with the incarcerated party to assure the quality of the video or audio transmission.

Last Reviewed: August 1, 2007

_____/s/ David D. King
David D. King
Administrative Judge of Probate Court

History:

Revised August 1, 2007

Effective August 31, 2002

See Also:

Probate Court Administrative Order 14 relative to Telephonic Appearances